

HOUSE BILL No. 1811

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4-8-1; IC 6-2.5; IC 6-3-4-6; IC 6-3-4-8.1; IC 6-3.1-5; IC 6-6-6.5-19; IC 6-8.1.

Synopsis: Various tax matters. Limits a sales tax exemption for hot tubs. Prohibits the assignment of the right to a refund of sales tax paid by a retail merchant for a sale related to an uncollectible account receivable. Requires a registered retail merchant's certificate to be renewed each year. Requires the filing of an amended Indiana return when modifications in a taxpayer's federal return results in a change in the taxpayer's adjusted gross income. Eliminates a requirement that a withholding agent that makes electronic adjusted gross income deposits file a quarterly return. Expands the penalties applicable to a person who does not register an aircraft and pay applicable gross retail taxes. Eliminates the requirement that the department of state revenue collect vehicle identification information on a tax return. Allows the department of state revenue to remove a person who is not liable for unpaid tax from an assessment notice. Indicates that the limitation period on the issuance of an assessment does not apply to an assessment reissued to the persons liable for the tax. Repeals an obsolete law granting an expired investment credit and a criminal penalty for failure to provide motor vehicle information to the department of state revenue.

Effective: Upon passage; July 1, 2003.

Crawford, Cochran

January 23, 2003, read first time and referred to Committee on Ways and Means.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1811

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-8-1, AS AMENDED BY P.L.227-1999,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 1. As used in this chapter:

4 "Department" means the department of commerce.

5 "Enterprise zone" means an enterprise zone created under
6 IC 4-4-6.1.

7 "Governing body" means the legislative body of a city, town, or
8 county, an economic development commission, or any board
9 administering the affairs of a special taxing district.

10 "Industrial development program" means any program designed to
11 aid the growth of industry in Indiana and includes:

12 (1) the construction of airports, airport facilities, and tourist
13 attractions;

14 (2) the construction, extension, or completion of sewerlines,
15 waterlines, streets, sidewalks, bridges, roads, highways, public
16 ways, and information and high technology infrastructure (as
17 defined in this section);



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(3) the leasing or purchase of property, both real and personal;
and

(4) the preparation of surveys, plans, and specifications for the
construction of publicly owned and operated facilities, utilities,
and services.

"Information and high technology infrastructure" includes, but is not
limited to, fiber optic cable and other infrastructure that supports high
technology growth and the purchase and installation of such fiber optic
cable and other infrastructure.

"Minority enterprise small business investment company" means an
investment company licensed under 15 U.S.C. 681(D).

"Qualified entity" means a city, town, county, economic
development commission, or special taxing district.

"Small business investment company" means an investment
company licensed under 15 U.S.C. 691 et seq.

"State corporation" means the state corporation ~~(as defined by~~
~~IC 6-3.1-5-2):~~ **organized under IC 6-3.1-5-7 (before its repeal) and**
IC 6-3.1-5-8 (before its repeal).

SECTION 2. IC 6-2.5-5-18 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. (a) Sales of
artificial limbs, orthopedic devices, dental prosthetic devices,
eyeglasses, contact lenses, and other medical equipment, supplies, and
devices are exempt from the state gross retail tax, if the sales are
prescribed by a person licensed to issue the prescription.

(b) Rentals of medical equipment, supplies, and devices are exempt
from the state gross retail tax, if the rentals are prescribed by a person
licensed to issue the prescription.

(c) Sales of hearing aids are exempt from the state gross retail tax
if the hearing aids are fitted or dispensed by a person licensed or
registered for that purpose. In addition, sales of hearing aid parts,
attachments, or accessories are exempt from the state gross retail tax.
For purposes of this subsection, a hearing aid is a device which is worn
on the body and which is designed to aid, improve, or correct defective
human hearing.

(d) Sales of colostomy bags, ileostomy bags, and the medical
equipment, supplies, and devices used in conjunction with those bags
are exempt from the state gross retail tax.

(e) Sales of equipment and devices used to administer insulin are
exempt from the state gross retail tax.

**(f) A hot tub that would otherwise qualify for an exemption
under this section is not exempt from the state gross retail tax if the
hot tub is designed for simultaneous use by more than one (1)**



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SECTION 3. IC 6-2.5-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) In determining the amount of state gross retail and use taxes which he must remit under section 7 of this chapter, a retail merchant shall deduct from his gross retail income from retail transactions made during a particular reporting period, an amount equal to his receivables which:

- (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
- (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
- (3) were written off as an uncollectible debt for federal tax purposes during the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects that receivable, then the retail merchant shall include the amount collected as part of his gross retail income from retail transactions for the particular reporting period in which he makes the collection.

(c) The right to a deduction under this section is not assignable.

SECTION 4. IC 6-2.5-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) A retail merchant may not make a retail transaction in Indiana, unless he has applied for a registered retail merchant's certificate.

(b) A retail merchant may obtain a registered retail merchant's certificate by filing an application with the department and paying a registration fee of:

- (1) zero dollars (\$0), if the retail merchant is renewing a registered retail merchant's certificate and the retail merchant is not delinquent in the filing of any form, return, or report required under this article or in the payment of any tax liability or deposit due under this article; and**
- (2) twenty-five dollars (\$25) for each place of business listed on the application, if subdivision (1) does not apply.**

The retail merchant shall also provide such security for payment of the tax as the department may require under IC 6-2.5-6-12.

(c) The retail merchant shall list on the application the location (including the township) of each place of business where he makes retail transactions. However, if the retail merchant does not have a fixed place of business, he shall list his residence as his place of business. In addition, a public utility may list only its principal Indiana office as its place of business for sales of public utility commodities or



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1 service, but the utility must also list on the application the places of
 2 business where it makes retail transactions other than sales of public
 3 utility commodities or service.

4 (d) Upon receiving a proper application, the correct fee, and the
 5 security for payment, if required, the department shall issue to the retail
 6 merchant a separate registered retail merchant's certificate for each
 7 place of business listed on the application. Each certificate shall bear
 8 a serial number and the location of the place of business for which it is
 9 issued.

10 (e) If a retail merchant intends to make retail transactions during a
 11 calendar year at a new Indiana place of business, he must file a
 12 supplemental application and pay the fee for that place of business.

13 (f) A retail merchant engaged in business in Indiana as defined in
 14 IC 6-2.5-3-1(c) who makes retail transactions that are only subject to
 15 the use tax must obtain a registered retail merchant's certificate before
 16 making those transactions. The retail merchant may obtain the
 17 certificate by following the same procedure as a retail merchant under
 18 subsections (b) and (c), except that the retail merchant must also
 19 include on the application:

20 (1) the names and addresses of the retail merchant's principal
 21 employees, agents, or representatives who engage in Indiana in
 22 the solicitation or negotiation of the retail transactions;

23 (2) the location of all of the retail merchant's places of business in
 24 Indiana, including offices and distribution houses; and

25 (3) any other information that the department requests.

26 (g) The department may permit an out-of-state retail merchant to
 27 collect the use tax. However, before the out-of-state retail merchant
 28 may collect the tax, he must obtain a registered retail merchant's
 29 certificate in the manner provided by this section. Upon receiving the
 30 certificate, the out-of-state retail merchant becomes subject to the same
 31 conditions and duties as an Indiana retail merchant and must then
 32 collect the use tax due on all sales of tangible personal property that he
 33 knows is intended for use in Indiana.

34 (h) The department shall submit to the township assessor before July
 35 15 of each year:

36 (1) the name of each retail merchant that has newly obtained a
 37 registered retail merchant's certificate between March 2 of the
 38 preceding year and March 1 of the current year for a place of
 39 business located in the township; and

40 (2) the address of each place of business of the taxpayer in the
 41 township.

42 SECTION 5. IC 6-2.5-8-5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. **(a) A registered**
 2 **retail merchant's certificate issued under section 1 of this chapter**
 3 **expires one (1) year after the date it is issued.**

4 **(b)** A certificate issued under section ~~1~~, 3 or 4 of this chapter is
 5 valid so long as the business or exempt organization is in existence.

6 SECTION 6. IC 6-3-4-6 IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) Any taxpayer, upon request
 8 by the department, shall furnish to the department a true and correct
 9 copy of any tax return which he has filed with the United States
 10 Internal Revenue Service which copy shall be certified to by the
 11 taxpayer under penalties of perjury.

12 (b) Each taxpayer shall notify the department of any modification
 13 of:

14 (1) a federal income tax return filed by the taxpayer after January
 15 1, 1978; or

16 (2) the taxpayer's federal income tax liability for a taxable year
 17 which begins after December 31, 1977.

18 The taxpayer shall file the notice, on the form prescribed by the
 19 department, within one hundred twenty (120) days after the
 20 modification is made.

21 **(c) If the federal modification results in a change in the**
 22 **taxpayer's federal or Indiana adjusted gross income, the taxpayer**
 23 **shall file an Indiana amended return within one hundred twenty**
 24 **(120) days after the modification is made.**

25 SECTION 7. IC 6-3-4-8.1 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8.1. (a) Any entity that
 27 is required to file a monthly return and make a monthly remittance of
 28 taxes under sections 8, 12, 13, and 15 of this chapter shall file those
 29 returns and make those remittances twenty (20) days (rather than thirty
 30 (30) days) after the end of each month for which those returns and
 31 remittances are filed, if that entity's average monthly remittance for the
 32 immediately preceding calendar year exceeds one thousand dollars
 33 (\$1,000).

34 (b) The department may require any entity to make the entity's
 35 monthly remittance and file the entity's monthly return twenty (20) days
 36 (rather than thirty (30) days) after the end of each month for which a
 37 return and payment are made if the department estimates that the
 38 entity's average monthly payment for the current calendar year will
 39 exceed one thousand dollars (\$1,000).

40 (c) If a person files a combined sales and withholding tax report and
 41 either this section or IC 6-2.5-6-1 requires the sales or withholding tax
 42 report to be filed and remittances to be made within twenty (20) days

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after the end of each month, then the person shall file the combined report and remit the sales and withholding taxes due within twenty (20) days after the end of each month.

(d) If the department determines that an entity's:

(1) estimated monthly withholding tax remittance for the current year; or

(2) average monthly withholding tax remittance for the preceding year;

exceeds ten thousand dollars (\$10,000), the entity shall remit the monthly withholding taxes due by electronic fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the remittance is due.

(e) If an entity's withholding tax remittance is made by electronic fund transfer, the entity is not required to file a monthly withholding tax return. ~~However, the entity shall file a quarterly withholding tax return before the twentieth day following the end of each calendar quarter.~~

SECTION 8. IC 6-6-6.5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. (a) The registration of any taxable aircraft without payment of the tax imposed by this chapter shall be void, and the department shall take possession of the certificate of registration and other evidences of registration, until the owner shall have paid the tax together with any penalties assessed by the department.

(b) If an owner does not register his aircraft and pay the tax imposed by this chapter when required, the owner is subject to a penalty and interest on the unpaid tax. The penalty is the greater of twenty dollars (\$20) or twenty percent (20%) of the unpaid tax. The interest applies at the rate established in IC 6-8.1-10-1. The penalty and interest apply from the date the tax becomes delinquent until the aircraft is registered and the tax paid.

(c) If an airport owner does not report the aircraft based at his airport when required by section 23 of this chapter, the department may assess a penalty equal to ten dollars (\$10) for each day that the report is late.

(d) If an owner does not register the owner's aircraft and pay the gross retail or use tax when required by this chapter, the owner shall be subject to ~~a penalty~~ **the penalties** and interest on the unpaid gross retail or use tax ~~as that are~~ established in ~~IC 6-8.1-10-1~~. **IC 6-8.1-10.**

SECTION 9. IC 6-8.1-5-2.5 IS ADDED TO THE INDIANA CODE



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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2003]: **Sec. 2.5. (a) If the department determines that a proposed
3 assessment notice includes an individual who is not responsible for
4 the tax liability, a new assessment may be made naming only the
5 taxpayer that is responsible for the tax liability.**

6 **(b) For assessments made under subsection (a), the time
7 limitation for assessments in section 2 of this chapter does not
8 apply.**

9 SECTION 10. IC 6-8.1-6-5 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. ~~(a)~~ The department
11 shall request from each taxpayer

12 ~~(1) vehicle identification information for vehicles owned by the
13 taxpayer; and~~

14 ~~(2) the amount of the taxpayer's gross income (as defined in
15 Section 61 of the Internal Revenue Code) derived from sources
16 within or outside Indiana using the provisions applicable to
17 determining the source of adjusted gross income that are set forth
18 in IC 6-3-2-2. The taxpayer shall itemize the amount of gross
19 income derived from each source.~~

20 ~~(b) The department shall send a list to the bureau of motor vehicles
21 showing by taxpayer the vehicle identification information obtained by
22 the department. However, the name, tax identification number, and the
23 corresponding information sent to the bureau may not include income
24 tax information.~~

25 SECTION 11. IC 6-8.1-7-1, AS AMENDED BY P.L.204-2001,
26 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2003]: Sec. 1. (a) This subsection does not apply to the
28 disclosure of information concerning a conviction on a tax evasion
29 charge. Unless in accordance with a judicial order or as otherwise
30 provided in this chapter, the department, its employees, former
31 employees, counsel, agents, or any other person may not divulge the
32 amount of tax paid by any taxpayer, terms of a settlement agreement
33 executed between a taxpayer and the department, investigation records,
34 investigation reports, or any other information disclosed by the reports
35 filed under the provisions of the law relating to any of the listed taxes,
36 including required information derived from a federal return, except to:

37 (1) members and employees of the department;

38 (2) the governor;

39 (3) the attorney general or any other legal representative of the
40 state in any action in respect to the amount of tax due under the
41 provisions of the law relating to any of the listed taxes; or

42 (4) any authorized officers of the United States;



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1 when it is agreed that the information is to be confidential and to be
2 used solely for official purposes.

3 (b) The information described in subsection (a) may be revealed
4 upon the receipt of a certified request of any designated officer of the
5 state tax department of any other state, district, territory, or possession
6 of the United States when:

7 (1) the state, district, territory, or possession permits the exchange
8 of like information with the taxing officials of the state; and

9 (2) it is agreed that the information is to be confidential and to be
10 used solely for tax collection purposes.

11 (c) The information described in subsection (a) relating to a person
12 on public welfare or a person who has made application for public
13 welfare may be revealed to the director of the division of family and
14 children, and to any county director of family and children located in
15 Indiana, upon receipt of a written request from either director for the
16 information. The information shall be treated as confidential by the
17 directors. In addition, the information described in subsection (a)
18 relating to a person who has been designated as an absent parent by the
19 state Title IV-D agency shall be made available to the state Title IV-D
20 agency upon request. The information shall be subject to the
21 information safeguarding provisions of the state and federal Title IV-D
22 programs.

23 (d) The name, address, Social Security number, and place of
24 employment relating to any individual who is delinquent in paying
25 educational loans owed to an institution of higher education may be
26 revealed to that institution if it provides proof to the department that the
27 individual is delinquent in paying for educational loans. This
28 information shall be provided free of charge to approved institutions of
29 higher learning (as defined by IC 20-12-21-3(2)). The department shall
30 establish fees that all other institutions must pay to the department to
31 obtain information under this subsection. However, these fees may not
32 exceed the department's administrative costs in providing the
33 information to the institution.

34 (e) The information described in subsection (a) relating to reports
35 submitted under IC 6-6-1.1-502 concerning the number of gallons of
36 gasoline sold by a distributor, and IC 6-6-2.5 concerning the number of
37 gallons of special fuel sold by a supplier and the number of gallons of
38 special fuel exported by a licensed exporter or imported by a licensed
39 transporter may be released by the commissioner upon receipt of a
40 written request for the information.

41 (f) The information described in subsection (a) may be revealed
42 upon the receipt of a written request from the administrative head of a

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state agency of Indiana when:

(1) the state agency shows an official need for the information;
and

(2) the administrative head of the state agency agrees that any information released will be kept confidential and will be used solely for official purposes.

(g) The name and address of retail merchants, including township, as specified in IC 6-2.5-8-1(h) may be released solely for tax collection purposes to township assessors.

(h) The department shall notify the appropriate innkeepers' tax board, bureau, or commission that a taxpayer is delinquent in remitting innkeepers' taxes under IC 6-9.

(i) All information relating to the delinquency or evasion of the motor vehicle excise tax ~~shall~~ **may** be disclosed to the bureau of motor vehicles in Indiana and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.

(j) All information relating to the delinquency or evasion of commercial vehicle excise taxes payable to the bureau of motor vehicles in Indiana ~~must~~ **may** be disclosed to the bureau and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

(k) All information relating to the delinquency or evasion of commercial vehicle excise taxes payable under the International Registration Plan may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

(l) This section does not apply to:

- (1) the beer excise tax (IC 7.1-4-2);
- (2) the liquor excise tax (IC 7.1-4-3);
- (3) the wine excise tax (IC 7.1-4-4);
- (4) the hard cider excise tax (IC 7.1-4-4.5);
- (5) the malt excise tax (IC 7.1-4-5);
- (6) the motor vehicle excise tax (IC 6-6-5);
- (7) the commercial vehicle excise tax (IC 6-6-5.5); and
- (8) the fees under IC 13-23.

(m) The name and business address of retail merchants within each county that sell tobacco products may be released to the division of mental health and addiction and the alcohol and tobacco commission solely for the purpose of the list prepared under IC 6-2.5-6-14.

SECTION 12. THE FOLLOWING ARE REPEALED [EFFECTIVE

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JULY 1, 2003]: IC 6-3.1-5; IC 6-8.1-10-11.

SECTION 13. [EFFECTIVE UPON PASSAGE] (a) IC 6-2.5-8-1, as amended by this act, applies to all registered retail merchant's certificates renewed after June 30, 2003, regardless of when the applicant applied to the department of state revenue to have the certificate renewed.

(b) All registered retail merchant's certificates issued by the department of state revenue before June 1, 2003, expire on June 30, 2003. All registered retail merchant's certificates issued by the department of state revenue after May 31, 2003, and before July 1, 2003, expire on June 30, 2004. However, to spread the workload of renewing registered retail merchant's certificates throughout a state fiscal year, the department of state revenue may establish a staggered renewal schedule, delaying the expiration date that would otherwise apply under this SECTION to a certificate until the expiration date set by the department of state revenue. The department of state revenue may not delay the expiration of a certificate under this subsection for more than one (1) year.

(c) To carry out this act, the department of state revenue may adopt temporary rules in the manner provided for the adoption, filing, and publication of emergency rules under IC 4-22-2-37.1. A temporary rule adopted under this subsection expires on the earlier of the following:

(1) The date that another temporary rule is adopted under this subsection to replace the previously adopted temporary rule.

(2) The date that a permanent rule is adopted under IC 4-22-2 to replace a temporary rule.

(3) July 1, 2005.

SECTION 14. An emergency is declared for this act.

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